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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/498,950	02/04/00	CARPENTER J	B0932/7134

PM82/0615

Jason M. Honeyman
Wolf Greenfield & Sacks PC Federal Reser
600 Atlantic Avenue
Boston MA 02210-2211

EXAMINER	
VANAMAN, F	
ART UNIT	**PAPER NUMBER**
3611	8

DATE MAILED: 06/15/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No.	Applicant(s)
09/498,950	Carpenter et al.
Examiner	**Art Unit**
Frank Vanaman	3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Jul 31, 2000*.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-85* is/are pending in the application.

4a) Of the above, claim(s) *30-35 and 51-55* is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-29, 36-50, and 56-85* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)
16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). *2,3,6*
18) ☐ Interview Summary (PTO-413) Paper No(s). _____
19) ☐ Notice of Informal Patent Application (PTO-152)
20) ☐ Other:

Election/Restriction

1. Applicant's election without traverse of invention I in Paper No. 7 is acknowledged.

2. Claims 30-35 and 51-55 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

Information Disclosure Statement

3. The Foreign and Non-Patent Literature references cited in applicant's Information Disclosure Statement, filed May 26, 2000 (Paper No. 2) have not been considered at this time due to the unavailability of the parent Application. These references will be considered at the time the application becomes available, or upon applicant's submission of copies of these documents if applicant should desire to forward copies of these Foreign and Non-Patent Literature references to the Office.

Specification

4. The disclosure is objected to because of the following informalities: on page 7, line 5, "riders" should be --rider's--.

Appropriate correction is required.

5. The use of the trademarks Slap Ratchet (note, for example, page 7, line 27) and Leverage Toe (note page 9, line 4) have been noted in this application. They should be capitalized wherever they appears (note, for example, page 7, line 31 and page 9, line 12) and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

6. Claims 71-73 and 84 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention. In claims 71 and 84 the scope is not clear in that the claims from which these claims depend are directed to the subcombination of a binding strap (e.g., claim 70, line 1) whereas claims 71 and 84 appear to be directed to a combination including further elements associated with the binding (e.g., claim 71, lines 1-2, claim 84, lines 1-2).

7. Each and every claim should be carefully reviewed and revised for clarity under 35 USC §112, second paragraph.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 and 17-28 of U.S. Patent No. 6,056,300. Although the conflicting claims are not identical, they are not patentably distinct from each other because both groups of claims are directed to the same subject matter, namely a binding strap for securing a boot including a further mounting strap with a plurality of holes therein, and which is engageable in a pocket in the binding strap, and an engagement strap connectable to a ratcheting buckle mounted on the binding strap. As regards claim 12, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a second pocket and second mounting strap as taught by claims 1-12 and 17-28 of the '300 Patent for the purpose of providing a more secure connection to the binding base element.

10. Applicant is reminded that Double Patenting issues involving applications 08/780,485 and 09/062,968 may exist but cannot be addressed at this time due to these applications being unavailable to the examiner.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

12. Claim 85 is rejected under 35 U.S.C. 102(e) as being anticipated by Bumgarner (US 5,758,895, cited by applicant). Bumgarner teaches a boot-engaging binding strap (not referenced, below 4) having a preselected contour adapted to be shaped like a boot, releasably connected by a portion of the strap in the form of a ratchet buckle (41) to an engagement strap (42) having multiple mating features in the form of serrations and which is inserted through the buckle portion of the strap (figure 1), and a further mounting strap (4) connectable to the binding (2) with a connector (14).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

14. Claims 1-29, 36-50 and 56-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bumgarner (cited previously) in view of Pozzebon (4,624,064, cited previously). The

reference of Bumgarner is discussed above and fails to teach the strap portion 4 as being inserted in a pocket which causes the strap portion (4) to conform to the binding strap contour. Pozzebon teaches a connection means including a strap end (5b) which is inserted in an element (3) including an internal pocket (40) having a slit-shaped open end; top, bottom and side walls; and a closed end, the strap having a plurality of apertures (30) and including a connection device (25') which engages with the apertures (through fastener rivets 31) and allows the strap to be repositioned with the element having the pocket (figure 4), wherein the strap end conforms, by being inserted in the pocket, to the profile or contour of the element and is positioned in close proximity thereto. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a pocket in the boot engaging strap portion of Bumgarner as suggested by the pocket connection taught by Pozzebon for the purpose of concealing the strap portion 4 of Bumgarner, thus facilitating a more secure connection.

As regards claim 12, The reference of Bumgarner as modified by Pozzebon fails to teach a second pocket in the boot engaging strap. It is well known in the mechanical arts to duplicate connectors for the purpose of increasing security and/or strength of the connection. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a second pocket and strap as taught by Bumgarner as modified by Pozzebon for the purpose of providing a stronger connection than available with a single strap and pocket combination.

As regards claim 61, the reference of Bumgarner as modified by Pozzebon fails to teach the rivets 31 as being screws. Screws and rivets are well known alternate fasteners in the mechanical arts, screws being preferred for purposes of allowing a connection to be disassembled, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to replace the rivets taught by Bumgarner as modified by Pozzebon with screws in order to allow the connector (25) to be removed.

Response to Arguments

Applicant's arguments filed with the preliminary amendment (page 12) that the case should now be in condition for allowance as a result of the amendment, have been carefully considered, but are not persuasive in view of the prior art of record, and the pending rejections under 35 USC §102 and §103.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Morgan (US 3,570,148), Delery (US 4,624,063), Iwama (US 4,649,657), Derrah (US 4,979,760), Harrell (US 5,205,055), Meiselman (US 5,435,080), Chemello et al. (US 5,718,066), Ross (US 5,857,700), Hansen et al. (US 5,918,897), Victor (CA 1,001,676), Duport (FR 2,592,807), Shaanan (CA 2,030,429), and Vetter (WO 94/21339) teach binding devices of pertinence.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is (703) 308-0424. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-1113.

Any response to this action should be mailed to:
Assistant Commissioner for Patents
Washington, DC 20231
or faxed to :
(703) 305-3597 or 305-7687 (for formal communications intended for entry; informal or draft communications may be faxed to the same number but should be clearly labeled "UNOFFICIAL" or "DRAFT")

F. VANAMAN
Primary Examiner
Art Unit 3611

F. Vanaman
June 13, 2001

6/13/01